

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

DIANE N. SANDERS

PLAINTIFF

VS.

CIVIL ACTION NO. 5:10-cv-124(DCB)(JMR)

WAL-MART STORES, INC.

DEFENDANT

ORDER

This cause is before the Court on the defendant Wal-Mart Stores, Inc.'s motion to dismiss pursuant to Fed.R.Civ.P. 37 and 41 (**docket entry 13**). Having carefully considered the motion, and being fully advised in the premises, the Court finds as follows:

In support of its motion, Wal-Mart alleges that it propounded discovery requests to the plaintiff on November 8, 2010, and that despite its good-faith efforts in requesting a response and filing a motion to compel, the plaintiff did not respond. However, on March 21, 2011, the defendant filed a "joint" motion to extend deadlines, in which it states:

Wal-Mart recently learned that opposing counsel's law partner was diagnosed with cancer, and this is why he has not provided Wal-Mart with Plaintiff's discovery responses. In light of this information, Wal-Mart has agreed to withdraw its Motion to Dismiss so long as Wal-Mart receives Plaintiff's discovery responses by March 31, 2011.

The defendant's motion was granted on March 22, 2011. On March 31, 2011, the plaintiff filed her notice of service of response to request for production (**docket entry 16**).

The court therefore finds that the defendant's motion should

be denied. Accordingly,

IT IS HEREBY ORDERED that the defendant Wal-Mart Stores, Inc.'s motion to dismiss pursuant to Fed.R.Civ.P. 37 and 41 (**docket entry 13**) is DENIED.

SO ORDERED, this the 6th day of April, 2011.

/s/ David Bramlette  
UNITED STATES DISTRICT JUDGE